

1 ROBERT BONTA  
Attorney General of California  
2 DANETTE VALDEZ, SBN 141780  
ANNADEL ALMENDRAS, SBN 192064  
3 JAMEE JORDAN PATTERSON, SBN 100967  
Supervising Deputy Attorneys General  
4 ERICA LEE, SBN 288151  
Deputy Attorney General  
5 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
6 Telephone: (415) 510-3367  
Fax: (415) 703-5480  
7 Danette.Valdez@doj.ca.gov  
Annadel.Almendras@doj.ca.gov  
8 Jamee.Patterson@doj.ca.gov  
Erica.Lee@doj.ca.gov

9 PAUL J. PASCUZZI, SBN 148810  
10 FELDERSTEIN FITZGERALD  
WILLOUGHBY PASCUZZI & RIOS LLP  
11 500 Capitol Mall, Suite 2250  
Sacramento, CA 95814  
12 Telephone: (916) 329-7400  
Fax: (916) 329-7435  
13 ppascuzzi@ffwplaw.com

14 Attorneys for California Department Housing and  
Community Development

15 UNITED STATES BANKRUPTCY COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 In re:  
19 PG&E CORPORATION

20 - and -

21 PACIFIC GAS AND ELECTRIC  
COMPANY,

22 Debtors.

- 23 ☐ Affects PG&E Corporation  
24 ☐ Affects Pacific Gas and  
Electric Company  
25 ☒ Affects both Debtors

Bankruptcy Case  
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

Date: September 14, 2021  
Time: 10:00 a.m.  
Ctrm: 17  
Judge: Dennis Montali

26 CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S  
27 SUR-REPLY REGARDING REORGANIZED DEBTORS' NINETY-THIRD OMNIBUS  
28 OBJECTION TO CLAIMS WITH RESPECT TO CLAIM NO. 56868 (CALIFORNIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT)

1 The California Department of Housing and Community Development (Department), a  
2 creditor in the above-referenced bankruptcy case (proof of claim no. 56868), hereby submits this  
3 sur-reply brief in support of its response to the Ninety-third Omnibus Objection to Claims (No  
4 Legal Liability Claims) (Dkt. 10808) filed by PG&E Corporation and Pacific Gas and Electric  
5 Company (collectively, PG&E).

## 6 ARGUMENT

### 7 I. THE LANGUAGE IN THE MANUFACTURED HOUSING ACT IS “CLEAR AND 8 UNMISTAKABLE”

9 PG&E argues that the language in the Manufactured Housing Act (MHA) is not “clear  
10 and unmistakable” in stating that no statute of limitations applies to the lien claims. (Reply, 4:1-  
11 5:8, 7:20-22.) But Health & Safety Code section 18116.1(b) (Section 18116.1(b)) does contain  
12 clear and unmistakable language. Section 18116.1(b) states: “Notwithstanding any other  
13 provision of law” the lien “shall include all fees and penalties due” “beginning with the fees for  
14 original registration” and “continue to accrue” to include all subsequent fees. The  
15 “notwithstanding” phrase emphasizes the language describing the time frame from which the lien  
16 amount is calculated. It is a very broad phrase. And it is comprehensive enough to include Code  
17 of Civil Procedure (CCP) sections 338 and 340(a) and prevent them from limiting the time frame  
18 during which the lien amount is calculated.

19 PG&E admits that courts have found language such as “there is no limitation” and “may  
20 be commenced at any time” to be sufficiently clear and unmistakable in communicating that no  
21 statute of limitations exists. (Reply 4:19-21.) Taken in the context of determining the time frame  
22 used to calculate the amount of a lien, “notwithstanding any other provision of law” is equally  
23 clear and equally all-encompassing. The phrase clearly indicates that any other provision of law  
24 that would limit or prohibit the amount of the lien to include the original registration fee (and all  
25 subsequent fees accruing) must be disregarded. The Legislature could have written Section  
26 18116.1(b) without the “notwithstanding” phrase and given it the meaning that PG&E advocates  
27 for. But it did not. And applying CCP sections 338(a) and 340(b) to Section 18116.1(b) would  
28 render the “comprehensive phrase ‘notwithstanding any other provision of law’” as mere

1 surplusage, a result courts generally avoid. (*In re Marriage of Cutler*, (2000) 79 Cal.App.4th 460,  
2 475, as modified (Apr. 14, 2000) (“*Cutler*”).)

3 The rule that the Legislature must state its intention that there be no statute of limitations  
4 clearly and unmistakably, as held in *Bogart v. George K. Porter Co.*, (1924) 193 Cal. 197, 201,  
5 *Union Paving Co. v. City Council of the City of San Bruno*, (1961) 189 Cal.App.2d 440, 442 and  
6 *County of Marin Assn. of Firefighters v. Marin County*, 30 Cal.App.4th 1638, 1651, does not  
7 support PG&E’s contention that the phrases “notwithstanding any other provision of law” and  
8 “continue to accrue” are not clear and unmistakable. In *Union Paving* and *County of Marin*, the  
9 statutes at issue did not have unclear or mistakable language; the language was simply absent or  
10 did not encompass statute of limitations provisions. (*County of Marin*, 30 Cal.App.4th at p. 1651  
11 [“The provisions of CERL that Retirement Association cites contain *no language* that establishes  
12 a state of limitations for collection of arrears contributions or exempts Retirement Association’s  
13 claims for arrears contributions and interest from the Code of Civil Procedures limitations  
14 periods.” (Emphasis added)]; *Union Paving*, 189 Cal.App.2d at p. 442 [“The statutes here  
15 involved contain *no language* which can be construed to mean that the right of reassessment runs  
16 forever. On the contrary, it is clear that the right to reassessment is subject to the statute of  
17 limitations[.]” (Emphasis added)].) In contrast, the MHA contains language exempting the liens  
18 from the Code of Civil Procedures limitations periods: “notwithstanding any other provision of  
19 law.”

20 PG&E attempts to distinguish *Cutler*, but it applies to this case. PG&E argues that, in  
21 *Cutler*, the “notwithstanding any other provision of law” clearly meant to avoid a statute of  
22 limitations because it emphasized language preceding it which stated that “a judgment for child  
23 support is fully enforceable until paid in full.” (Reply, 7:10-17.) But that is no different than here.  
24 In section 18116.1(b) the same phrase emphasizes the language which follows it and which states  
25 that the lien “shall include” the delinquent “original registration” fee. In other words, the lien  
26 shall include the delinquent original registration fee notwithstanding any generally applicable  
27 statute of limitations. This is as clear and unmistakable as the language in *Cutler*.

28 PG&E also attempts to distinguish *Collection Bureau of San Jose v. Rumsey*, (2004) 24

1 Cal.4th 301, 310 (*Rumsey*). (Reply 6:21-26.). But nothing in *Rumsey*'s holding states that the  
2 "basic principles of statutory construction" would not apply to statutes with language exempting  
3 it from the general statute of limitations.

4 PG&E cites *Griffith Co. v. Kelly*, (1942) 52 Cal.App.2d 739, 742 for the proposition that  
5 there is a distinction under California Law between a right and a remedy. (Reply 6:3-12.) In  
6 *Griffith*, the statute at issue included the phrase "at any time . . . the contractor or his assignee  
7 may sue...", and the Court of Appeal held that the phrase "at any time" meant that there was a  
8 right to sue but not a perpetual remedy. (52 Cal.App.2d at pp. 742-743.) The statutory language  
9 here is different. Here, the lien must include all fees from the very beginning of when the fees  
10 accrued, and those fees may be older than 3 years; therefore, the CCP's general statute of  
11 limitations, and any other provision of law that would limit the time frame of the fees, does not  
12 apply. If the lien extinguishes after three years, it could easily not include the delinquent original  
13 registration fee. Thus, here, the Legislature must be allowing a remedy to exist on the liens  
14 without a time limitation.

15 PG&E contends that the Department misapplies *Palmer v. Agee*, (1978) 87 Cal.App.3d 377  
16 because, as PG&E argues, the MHA is not irreconcilable with the CCP since the MHA does not  
17 state that no statute of limitations applies to lien enforcement. (Reply 8:22-27.) But as PG&E  
18 argues, the MHA needs only to have clear and unmistakable language that no statute of  
19 limitations applies to lien enforcement, and as explained above, section 18116.1 contains the  
20 necessary language.

21 **II. OTHER SECTIONS IN THE MHA INDICATE THAT THE LEGISLATURE DID NOT**  
22 **INTEND FOR A STATUTE OF LIMITATIONS TO APPLY**

23 PG&E argues that, after the CCP's general statutes of limitations have run, the liens will  
24 have been extinguished pursuant to CCP section 2911, and therefore the Department may amend  
25 title to the commercial modulars despite Health and Safety Code section 18116.1(c)'s language  
26 stating that "[u]ntil the amount of a lien provided for in subdivision (a) or (b) is paid to the  
27 department, the department shall not [amend title or issue a duplicate certificate of title]." But the  
28 language of section 18116(c) shows the Legislature's intent that the lien exist until "paid." The

1 Legislature could have drafted the section to state “until paid or extinguished.” But it did not.

2 Similarly, while a tolling agreement could stay any applicable statute of limitations, the  
3 long term five-year payment plan in Health and Safety Code section 18116.1(d)(3) indicates the  
4 Legislature’s intent that the liens would not be extinguished in three years. By providing for a  
5 five-year payment plan, the Legislature could not have intended for a three-year statute of  
6 limitations period to apply. As indicated by the text of the MHA, the Legislature intended these  
7 particular types of liens to exist until paid. And, “[t]he most important consideration in  
8 construction of statutes is giving effect to the legislative intent behind them. Therefore, a  
9 construction that will promote legislative intent, purpose and policy will override a construction  
10 that would defeat it.” (*Palmer*, 87 Cal.App.3d at p. 384.)

11 Finally, PG&E argues that since the language the Department relies upon is not in section  
12 18116.2(a), the section addressing collection actions, the Legislature did not intend for the  
13 language to relate to a statute of limitations. (Reply, 5:21-24.) But the language is appropriately in  
14 section 18116.1 since section 18116.1 relates to how far back in time the lien can relate and under  
15 exactly what circumstances the Department may release the lien, which indicate the Legislature’s  
16 intention that no statute of limitations applies to these particular liens. (Health & Saf. Code, §§  
17 18116.1(b), (c) & (d).) Similarly, in the California Vehicle Code, the legislature lists the statute of  
18 limitations for unpaid registration fees on vehicles in section 9800, the section which relates to  
19 which payments constitute a lien, not in section 9801, which addresses collection actions<sup>1</sup>. And  
20 while the Legislature could have prescribed a three-year statute of limitations in the MHA as it  
21 did for vehicles in the Vehicle Code, it declined to do so.

22 **III. THE DEPARTMENT COULD NEVER COLLECT ON REGISTRATION FEES IF CCP**  
23 **SECTIONS 338 AND 340 APPLY**

24 PG&E states that the Department cannot recover more than \$5,000 because it did not file  
25 any civil actions for the amounts owed. (Reply 3:20-22.) The Department, like most public  
26 agencies, does not have the resources or funding to foreclose on every delinquent owner’s

27 \_\_\_\_\_  
28 <sup>1</sup> In 1980, the Department of Housing and Community Development took over the registration  
and titling of mobile homes from the Department of Motor Vehicles (DMV).

1 commercial modular, much less initiate a lawsuit every time it is owed a couple thousand dollars  
2 or less. By the fourth year after registration, the amounts owed on PG&E's commercial modular  
3 were less than two thousand dollars. (Proof of Claim No. 56868.) PG&E owes on 92 registration  
4 fees, and PG&E is among thousands of owners who are required to pay registration fees to the  
5 Department. The only practical way the Department can enforce payment is by refusing to amend  
6 title. From a public policy standpoint, PG&E's arguments would mean that it, and other owners,  
7 would be able to evade paying registration fees.

### 8 CONCLUSION

9 For the forgoing reasons, and the reasons stated in the Department's Response to PG&E's  
10 Objection to Proof of Claim No. 56868, the Department respectfully requests that the Court  
11 overrule PG&E's objection to the Department's proof of claim.

12 Dated: September 7, 2021

Respectfully submitted,

13 ROB BONTA  
14 Attorney General of California  
15 DANETTE VALDEZ, SBN 141780  
16 ANNADEL ALMENDRAS, SBN 192064  
17 JAMEE JORDAN PATTERSON, SBN 100967  
18 Supervising Deputy Attorneys General  
19 ERICA LEE, SBN 288151  
20 Deputy Attorney General

21 By: /s/ Erica Lee  
22 Erica Lee  
23 Deputy Attorney General

24 PAUL J. PASCUZZI  
25 FELDERSTEIN FITZGERALD  
26 WILLOUGHBY PASCUZZI & RIOS LLP

27 By: /s/ Paul J. Pascuzzi  
28 Paul J. Pascuzzi

Attorneys for California Department of Housing and  
Community Development

1 **PROOF OF SERVICE**

2 I, Susan R. Darms, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a  
4 party to the within action; my business address is 500 Capitol Mall, Suite 2250, Sacramento, CA  
5 95814. On September 7, 2021, I served the within documents:

6 CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S  
7 SUR-REPLY REGARDING REORGANIZED DEBTORS' NINETY-THIRD OMNIBUS  
8 OBJECTION TO CLAIMS WITH RESPECT TO CLAIM NO. 56868 (CALIFORNIA  
9 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT)

10 By Electronic Service only via CM/ECF.

11 /s/ Susan R Darms  
12 Susan R. Darms  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28